

**2015 No. 1755**

**FINANCIAL SERVICES AND MARKETS**

**The Transparency Regulations 2015**

*Made* - - - - *8th October 2015*

*Laid before Parliament* *9th October 2015*

*Coming into force in accordance with regulation 1(2), (3)  
and (4)*

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Transparency Regulations 2015.

(2) Regulations 1, 3 and 7 come into force on 1st November 2015, regulations 2 and 5 come into force on that date for the purpose of making rules under Part 6 of the Act(c) and regulation 6 comes into force on that date for the purpose of making rules under Part 9A of the Act(d).

(3) Regulation 4 comes into force on 26th November 2015, and regulations 2 and 5 come into force on that date for remaining purposes.

(4) Regulation 6 comes into force on 31st May 2016 for remaining purposes.

(5) In these Regulations, “the Act” means the Financial Services and Markets Act 2000.

**Amendments to Part 6 of the Act: transparency rules**

2.—(1) In section 89A of the Act(e) (transparency rules)—

(a) in subsection (3) omit paragraph (b);

(b) in subsection (4)(b) omit “, or treated by virtue of subsection (3)(b) as held,”.

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(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c.8.

(d) Part 9A was inserted by the Financial Services Act 2012 (c.21), section 24.

(e) Section 89A was inserted by the Companies Act 2006 (c.46), section 1266(1) and amended by the Financial Services Act 2012, section 16.

(2) In section 89C of the Act(a) (provision of information by issuers of transferable securities), in subsection (2)—

- (a) at the end of paragraph (aa) insert “and”;
- (b) omit “and” at the end of paragraph (b);
- (c) omit paragraph (c).

(3) Omit section 89E of the Act(b) (notification of proposed amendment of issuer’s constitution).

(4) In section 89F of the Act(c) (transparency rules: interpretation etc.)—

- (a) in subsection (1)—
  - (i) at the end of paragraph (a) insert “and”;
  - (ii) in paragraph (b) for sub-paragraph (iii) substitute—
    - “(iii) if he holds, directly or indirectly, a financial instrument which satisfies the conditions set out in Article 13(1)(a) or (b) of the transparency obligations directive(d).”;
  - (iii) omit “and” at the end of paragraph (b);
  - (iv) omit paragraph (c);
- (b) omit subsection (2);
- (c) in subsection (4) omit the definitions of “Article 13 instrument” and “financial instrument”.

(5) In section 89J of the Act(e) (power to call for information: supplementary provisions) in subsection (3), in the definition of “votesholder”, omit paragraph (b) (and the “or” before it).

### **Storage of regulated information**

3. After section 89V of the Act(f) (action under section 89U: procedure) (but before the italic heading following that section) insert—

#### **“Storage of regulated information**

**89W.**—(1) The FCA must ensure that there is at least one mechanism for the central storage of regulated information meeting the requirements of Article 21(2) of the transparency obligations directive and any directly applicable EU regulation made under Article 21(4) of that directive.

(2) In this section, “regulated information” has the meaning given by Article 2(1)(k) of the transparency obligations directive.”.

### **Amendments to the Act: sanctions**

4.—(1) After section 89N of the Act(g) (right to refer matters to the Tribunal) (but before the italic heading following that section) insert—

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- (a) Section 89C was inserted by the Companies Act 2006, section 1266(1) and amended by the Financial Services Act 2012, section 16 and S.I. 2014/3293.
  - (b) Section 89E was inserted by the Companies Act 2006, section 1266(1) and amended by the Financial Services Act 2012, section 16.
  - (c) Section 89F was inserted by the Companies Act 2006, section 1266(1) and amended by S.I. 2008/3053.
  - (d) OJ L 390, 31.12.2004, p.38.
  - (e) Section 89J was inserted by the Companies Act 2006, section 1267 and amended by the Financial Services Act 2012, section 16.
  - (f) Section 89V was inserted by the Financial Services Act 2012, section 19(1).
  - (g) Section 89N was inserted by the Companies Act 2006, section 1268.

## **“Voting rights suspension orders**

**89NA.**—(1) The court may, on the application of the FCA and in accordance with this section, make a voting rights suspension order in respect of a person who is a voteholder in relation to shares in a particular company which are admitted to trading on a regulated market and identified in the application.

(2) A voting rights suspension order is an order which suspends the person’s exercise of voting rights attaching to the shares to which the order relates.

(3) The court may make a voting rights suspension order in respect of a person only if it is satisfied—

- (a) that the person has contravened one or more relevant transparency provisions in respect of any of the shares identified in the application or any other shares in the same company which are admitted to trading on a regulated market, and
- (b) that the contravention is serious enough to make it appropriate to make the order.

(4) For the purposes of subsection (3)(b), the court may, in particular, have regard to—

- (a) whether the contravention was deliberate or repeated;
- (b) the time taken for the contravention to be remedied;
- (c) whether the voteholder ignored warnings or requests for compliance from the FCA;
- (d) the size of the holding of shares to which the contravention relates;
- (e) any impact of the contravention on the integrity of the UK financial system;
- (f) the effect of the contravention on any company merger or takeover.

(5) A voting rights suspension order may be made in relation to some or all of the shares to which the application relates.

(6) A voting rights suspension order may be made for a specified period or an indefinite period.

(7) A voting rights suspension order takes effect—

- (a) on the date specified in the order, or
- (b) if no date is specified, at the time it is made.

(8) Where a voting rights suspension order has been made, the FCA, the person to whom it applies or the company which issued the shares to which it relates, may apply to the court for—

- (a) a variation of the order so as to alter the period for which it has effect or the shares in relation to which it has effect, or
- (b) the discharge of the order.

(9) The FCA must consult the PRA before making an application to the court under this section in relation to—

- (a) a person who is a PRA-authorized person, or
- (b) shares issued by a PRA-authorized person.

(10) The jurisdiction conferred by this section is exercisable—

- (a) in England and Wales and Northern Ireland, by the High Court, and
- (b) in Scotland, by the Court of Session.

(11) In this section—

“relevant transparency provision” means—

- (a) a provision of the transparency rules which implements Article 9, 10, 12, 13 or 13a of the transparency obligations directive, or
- (b) a provision otherwise made in accordance with that directive which implements any of those Articles;

“voteholder” has the meaning given by section 89J(3).”.

(2) In section 91 of the Act(a) (penalties for breach of Part 6 rules)—

- (a) in subsection (2) for “(1B)” substitute “(1B)(a)(ii) or (b)”;
- (b) after subsection (2) insert—

“(2A) If—

- (a) a person has contravened a provision mentioned in subsection (1B)(a)(i), and
- (b) the FCA considers that another person (“A”), who was at the material time a relevant officer of the person, was knowingly concerned in the contravention,

the FCA may impose upon A a penalty of such amount as it considers appropriate.

(2B) In subsection (2A) “relevant officer” of a person means—

- (a) a director or other similar officer of the person, or
- (b) if the affairs of the person are managed by its members, a member of the person.”.

(3) In section 97 of the Act(b) (appointment by FCA of persons to carry out investigations)—

(a) in subsection (1)—

- (i) in paragraph (b), for “(1A) or (1B)” substitute “or (1A), or section 91(1B)(c) (ignoring paragraph (a)(i) of that provision)”;

(ii) after paragraph (b) insert—

“(ba) a person who was at the material time a relevant officer of a person mentioned in section 91(1B) (ignoring paragraphs (a)(ii) and (b) of that provision) has been knowingly concerned in a contravention by that person of—

- (i) a provision of the transparency rules, or
- (ii) a provision otherwise made in accordance with the transparency obligations directive;”;

(b) after subsection (3) insert—

“(4) In this section “relevant officer” has the meaning given by section 91(2B).”.

(4) In section 380 of the Act(d) (injunctions), in subsection (6)(a)—

- (a) omit the “or” at the end of sub-paragraph (iii);
- (b) at the end of sub-paragraph (iv) insert “or”;
- (c) after sub-paragraph (iv) insert—

“(v) which is imposed by a provision made in accordance with the transparency obligations directive (within the meaning of section 103(1));”.

(5) In section 391 of the Act(e) (publication), in subsection (4A) for “section 391A” substitute “sections 391A and 391B”.

(6) For the heading of section 391A of the Act(f) (publication: special provisions relating to certain penalties) substitute “Publication: special provisions relating to the capital requirements directive”.

(7) After section 391A of the Act (but before the italic heading) insert—

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- (a) Section 91(2) was amended by the Companies Act 2006, Schedule 15 paragraphs 1 and 6, the Financial Services Act 2012, sections 16 and 20 and S.I. 2005/381 and 1433.
  - (b) Section 97 was amended by the Companies Act 2006, Schedule 15 paragraph 8, the Financial Services Act 2012, section 16 and Schedule 18 paragraph 7 and S.I. 2005/381.
  - (c) Section 91(1B) was inserted by the Companies Act 2006, Schedule 15 paragraph 6, and amended by the Financial Services Act 2012, section 16.
  - (d) Section 380 was amended by the Financial Services Act 2012, Schedule 9 paragraph 19 and the Financial Services (Banking Reform) Act 2013 (c.33), Schedule 10 paragraph 3; there are other amendments but none is relevant.
  - (e) Section 391 was amended by S.I. 2013/3115; there are other amendments but none is relevant.
  - (f) Section 391A was inserted by S.I. 2013/3115.

## **“Publication: special provisions relating to the transparency obligations directive**

**391B.**—(1) This section applies where a decision notice, final notice or notice under section 89M(a) relates to the imposition of a sanction or measure to which Article 29(1) of the transparency obligations directive applies.

(2) Where the FCA publishes information under section 391(4) or subsection (3) about a matter to which a decision notice or a notice under section 89M relates and the person to whom the notice is given refers the matter to the Tribunal—

- (a) the FCA must include information to that effect in the publication at the time of the publication, or,
- (b) if the matter is referred to the Tribunal after the publication, the FCA must update the publication or publish that information separately.

(3) Subject to subsection (4), where the FCA gives a final notice or a notice under section 89M, it must publish information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Information about a matter to which a final notice or a notice under section 89M relates may be published anonymously where—

- (a) the sanction is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- (b) failing to publish anonymously would seriously jeopardise the stability of the financial system or an ongoing official investigation; or
- (c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate and serious damage to the persons involved.

(5) Where subsection (4) applies, the FCA may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(6) In this section, the “transparency obligations directive” has the same meaning as in section 103(1)(b).”.

## **Amendments to Part 6 of the Act: interpretation**

**5.**—(1) In section 102A of the Act(c) (definition of “issuer”), in subsection (6)(aa)—

- (a) omit “legal”;
- (b) for “representing securities, the issuer is the issuer of the securities represented” substitute “admitted to trading on a regulated market, the issuer is the issuer of the securities represented by the depository receipt, whether or not those securities are admitted to trading on a regulated market”.

(2) For section 102C of the Act(d) (meaning of “home State” in relation to transferable securities) substitute—

### **“Meaning of “home State” in relation to transferable securities**

**102C.** In this Part, in relation to an issuer of transferable securities, the “home State”—

- (a) in relation to transparency rules and other provisions made in accordance with the transparency obligations directive and in section 96A(e), is the EEA State which is

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(a) Section 89M was inserted by the Companies Act 2006, section 1268, and amended by the Financial Services Act 2012, section 16.

(b) Section 103 was substituted by S.I. 2005/1433, and the definition of the “transparency obligations directive” was inserted by the Companies Act 2006, section 1265 and amended by S.I. 2012/1538.

(c) Section 102A was inserted by S.I. 2005/1433, and amended by the Companies Act 2006, Schedule 15, Part 1, paragraphs 1 and 10; there are other amendments but none is relevant.

(d) Section 102C was inserted by S.I. 2005/1433.

(e) Section 96A was inserted by S.I. 2005/381 and amended by S.I. 2012/1538 and the Financial Services Act 2012, section 16.

the “home Member State” for the purposes of the transparency obligations directive (which is to be determined in accordance with Article 2.1(i) of that directive);

- (b) except where paragraph (a) applies, is the EEA State which is the “home Member State” for the purposes of the prospectus directive (which is to be determined in accordance with Article 2.1(m) of that directive).”.

(3) In section 103 of the Act(a) (interpretation of Part 6: official listing)—

(a) in subsection (1)—

- (i) in the definition of “the prospectus directive” after “Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010” insert “and by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013(b)”;
- (ii) at the end of the definition of “the transparency obligations directive” insert “and by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013”;

(b) omit subsection (1A).

### **Control over authorised persons and others: disregarded holdings**

6.—(1) In section 184 of the Act(c) (disregarded holdings)—

- (a) in subsection (5)(b), omit “the credit institution or investment firm ensures that”;
- (b) after subsection (9) insert—

“(9A) Shares acquired for stabilisation purposes in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments(d) are disregarded, provided that the voting power attached to those shares is not exercised or otherwise used to intervene in the management of B or P.”.

(2) In section 301E of the Act(e) (disregarded holdings)—

- (a) in subsection (5)(b), omit “the credit institution or investment firm ensures that”;
- (b) after subsection (9) insert—

“(9A) Shares acquired for stabilisation purposes in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments are disregarded, provided that the voting power attached to those shares is not exercised or otherwise used to intervene in the management of B or P.”.

(3) In section 422A of the Act(f) (disregarded holdings)—

- (a) in subsection (5)(b), omit “the credit institution or investment firm ensures that”;
- (b) after subsection (9) insert—

“(9A) Shares acquired for stabilisation purposes in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments are disregarded, provided that the voting power attached to those shares is not exercised or otherwise used to intervene in the management of B or P.”.

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(a) Relevant amendments were made by the Companies Act 2006, section 1265 and S.I. 2012/1538 and 2014/3293.  
(b) OJ L 294, 6.11.2013 p.13.  
(c) Section 184 was substituted by S.I. 2009/534, and amended by S.I. 2011/1613 and 2013/3115.  
(d) OJ L 336, 23.12.2003, p.33.  
(e) Section 301E was substituted by S.I. 2009/534, and amended by S.I. 2011/1613 and 2013/3115.  
(f) Section 422A of the Act was substituted by S.I. 2009/534, and amended by S.I. 2011/1613 and 2013/3115.

## Review

7.—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 2 to 6,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>(a)</sup> (which is implemented by means of regulations 2 to 6) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision made by regulations 2 to 6,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

*Alun Cairns*  
*John Penrose*

8th October 2015

Two of the Lords Commissioners of Her Majesty's Treasury

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement in part Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 (OJ L 294, 6.11.2013 p.13) (“the Transparency Directive Amending Directive”) which amends Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (“the Transparency Directive”) (OJ L 390, 31.12.2004, p.38).

Regulation 2 makes amendments to Part 6 of the Financial Services and Markets Act 2000 (c.8) (“the Act”) concerning transparency rules. “Comparable instruments” within the scope of section 89A(3)(b) of the Act are by virtue of amendments made by the Transparency Directive Amending Directive now within the scope of the Transparency Directive, and fall within section 89A(2) of the Act, so section 89A(3)(b) is omitted. Section 89F of the Act is amended in consequence of the Transparency Directive Amending Directive, which has replaced determination by delegated acts in Article 13 (notifications for the acquisition or disposal of major shareholdings) with a set of conditions which determine whether or not notification requirements apply to a financial instrument.

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(a) OJ L 294, 6.11.2013 p.13.

Regulation 3 transposes Article 21(2) of the Transparency Directive by introducing the requirement in section 89W of the Act for the Financial Conduct Authority (“FCA”) to ensure that there is a central storage system for all information required to be disclosed under the Transparency Directive, EU legislation made under the Transparency Directive and Article 6 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p.16). The central storage system is currently provided by Morningstar, Inc.

Regulation 4 amends the Act to transpose requirements relating to sanctioning powers of the competent authority introduced by the Transparency Directive Amending Directive. New section 89NA of the Act permits the FCA to apply to the court for a suspension of voting rights exercisable in relation to shares in the event of infringements of requirements of the Transparency Directive to notify changes in major shareholdings (transposing Article 28b(2) of the Transparency Directive). It also makes consequential amendments to sections 91 (penalties for breach of transparency rules) and 97 of the Act (appointment by FCA of persons to carry out investigations) to refer to officers of non-corporate bodies who hold roles equivalent to directors. Regulation 4 also inserts a new section 391B of the Act (transposing amendments to Article 29 of the Transparency Directive) concerning publicity for FCA sanctions for infringing the Transparency Directive. The FCA has the discretion to make information anonymous in certain circumstances.

Regulation 5 amends definitions in Part 6 of the Act (official listing) in consequence of Transparency Directive Amending Directive. Regulation 6 amends the meaning of disregarded holdings for the purposes of Part 12 of the Act (control over authorised persons) and other control requirements in the Act consequent on amendments to Article 9 of the Transparency Directive.

Regulation 7 requires the Treasury to review these Regulations every five years.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.gov.uk](http://www.gov.uk) and is published alongside these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).

A transposition note setting out how these Regulations transpose the provisions of the Transparency Directive Amending Directive is published on [www.legislation.gov.uk](http://www.legislation.gov.uk) alongside these Regulations.

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